

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GRANT COUNTY EMPLOYEES,  
WCCME, AFSCME, AFL-CIO,

Complainant,

vs.

GRANT COUNTY,

Respondent.  
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Case X  
No. 33076 MP-1573  
Decision No. 21567-A

Appearances:

Mr. Jack Bernfeld, and Mr. Darold Lowe, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Complainant.

Melli, Walker, Pease and Ruhly, S.C., Attorneys at Law, by Mr. Jack D. Walker, 119 Monona Avenue, P. O. Box 1664, Madison, Wisconsin 53701, appearing on behalf of the Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On March 21, 1984, Grant County Employees, WCCME, AFSCME, AFL-CIO filed a complaint with the Wisconsin Employment Relations Commission, alleging that Grant County had committed prohibited practices within the meaning of Sec. 111.70, Wis. Stats., by ceasing to pay for certain meal expenses and association fees of employees during Complainant Union's organizing campaign. The Commission appointed Christopher Honeyman, a member of its staff, to act as Examiner in this matter, and to make and issue Findings of Fact, Conclusions of Law and Order, as provided in Sec. 111.07(5), Wis. Stats. A hearing was held in Lancaster, Wisconsin, on May 8, 1984; both parties filed briefs, which were received on June 25, 1984. The Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Grant County Employees, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, is a labor organization within the meaning of Sec. 111.70(1)(j), Wis. Stats., and has its principal offices at 5 Odana Court, Madison, Wisconsin.

2. Grant County is a municipal employer, having its principal offices at Grant County Courthouse, Lancaster, Wisconsin. Mary Wirth is the Chairman of the County's Board of Supervisors and is its agent.

3. In or after December, 1982 employees of Grant County contacted Complainant Union for purposes of organizing a bargaining unit, and employees met with a representative of Complainant Union in Lancaster, Wisconsin, on or about January 18, 1983. Following discussions with other labor organizations and subsequent meetings with Complainant Union, the Complainant filed a petition with the Wisconsin Employment Relations Commission for an election among professional employees of Grant County, on April 6, 1983. Following an election held on November 16, 1983, the Union was certified by the Commission on November 29, 1983 as exclusive bargaining representative of "all regular full-time and regular part-time professional employees of Grant County, excluding managerial, supervisory, confidential and all other employees." This bargaining unit included approximately 30 employees, of whom approximately 20 were social workers employed in the County's Department of Social Services. Assistant district attorneys employed in the County District Attorney's office are also included in said unit.

4. Prior to April, 1983 it was the policy of the County to pay employee expenses for meals eaten during the course of County business during certain specified hours and outside the city where a given employee's office was located, but within the confines of Grant County. This policy applied in practice only to social workers employed in the Department of Social Services and to members of the County Board of Supervisors. On April 5, 1983 the County Board's Employee

Relations Committee voted to recommend to the County Board "that no County employee or supervisor be reimbursed for meals while in Grant County unless meal price is included in a conference registration fee." At the same meeting, the Committee voted to recommend to the County Board certain increases in the meal costs reimbursable to employees. During April, 1983 the County Board adopted said recommendations by the Employee Relations Committee, and these were put into effect as of May 1, 1983.

5. The record shows that the in-County meal benefit had been discussed in the Employee Relations Committee since about May, 1982, and that the County was, during the course of 1982 and early 1983, considering a number of economy moves. The record does not demonstrate that the cancellation of the in-County meal benefit, which applied also to members of the County Board, was related to the Complainant Union's organizing attempts, was in retaliation for them, or would reasonably tend to interfere with, restrain or coerce employees in the exercise of their rights protected under the Municipal Employment Relations Act.

6. In 1980 and 1982, on two occasions the County paid for state bar association fees on behalf of three different assistant district attorneys. The record does not show any such payment in 1981, and the record does not demonstrate that such payments were in accordance with the County's policies in effect at that time. On November 21, 1982, a request for an apparently similar payment dated November 18, 1982 on behalf of Assistant District Attorney Greg Richardson was denied by the Employee Relations Committee. The record does not demonstrate that this refusal or the County's subsequent refusal to pay bar association fees represented a change in the County's policy or was related to Complainant Union's organizing campaign.

Upon the basis of the foregoing Findings of Fact, the Examiner makes and files the following

#### CONCLUSIONS OF LAW

1. The decision by the County Board to cease paying for in-County meal expenses of employees was a consequence of deliberations begun prior to the Complainant Union's organizing campaign and was unrelated to it, and therefore, does not violate Sec. 111.70(3)(a)1 or 3, Wis. Stats.

2. The County's Employee Relations Committee's decision to deny payment of bar association dues for assistant district attorneys was consistent with the previous policy of the County and occurred prior to December, 1982 and subsequent discussions among employees concerning representation, and therefore did not violate Sec. 111.70(3)(a)1 or 3, Wis. Stats.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and renders the following

#### ORDER 1/

That the complaint filed in this matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin this 20th day of August, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Christopher Honeyman, Examiner

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1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

(Footnote 1 continued on Page 3)

Section 111.07(5), Stats.

(5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The complaint alleges that the County violated unspecified sections of Sec. 111.70, Wis. Stats., by cancelling two employee benefits during and because of Complainant Union's organizing campaign.

In-County Meal Allowances

There is no dispute that a prior County policy of payment for meals to employees and County Board supervisors who incurred such expenses while working outside of their respective "home office towns", but within the County, was changed as a result of votes taken in the Employee Relations Committee and in the County Board in April, 1983. This benefit had been used as a practical matter only by social workers employed in the Department of Social Services, and by County Board Supervisors themselves. Tom Waters, Chairman of the Employee Relations Committee, admitted knowledge of the Union's organizing attempts as of sometime in March, 1983, while several employee witnesses testified that the Union's organizing campaign was conducted without any attempt at secrecy and that discussions concerning it were had with several different supervisors in the Department of Social Services as early as December, 1982 and January, 1983. The record contains no evidence of overt hostility toward the Union's organizing attempts on the part of the County.

Unilateral changes in wages, hours or working conditions may violate either Sec. 111.70(3)(a)1, or 3, or 4 of the Municipal Employment Relations Act. Sec. 111.70(3)(a)(4), however, can be violated only where a labor organization is already the exclusive representative of the employees affected, which is clearly not the case here. A violation of Sec. 111.70(3)(a)(3), meanwhile, requires that the Complainant prove by a clear and satisfactory preponderance of the evidence 2/ that the employer acted with knowledge of the union's organizing campaign and at least partly out of hostility to that campaign, and that the actions complained of were discriminatory. Here, as noted, there is no direct evidence of employer hostility to Complainant's campaign, and the act of cancelling the in-County meal allowance policy cannot be said to be discriminatory, even though only social workers were affected among the County's regular employees, when the County also cancelled that benefit for County Board members.

But a finding of anti-union animus is not necessary to establish a violation of Sec. 111.70(3)(a)(1). It is well settled that a municipal employer violates this section whenever it commits an act, regardless of motive, which changes wages, hours or conditions of employment of employees in a way that would be likely to interfere with, restrain or coerce such employees in the exercise of their MERA rights. 3/ The Commission has previously stated that "where, (as here) such changes are made during the pendency of a question of representation, evidence that the municipal employer was aware of the pendency of such question, and/or evidence that such changes were made shortly after the municipal employer became aware of such pendency, is evidence probative both as to whether the changes were unlawfully motivated and as to whether the changes were likely to have an unlawful impact on employee exercise of rights. But while such evidence is probative as to both those issues, is not necessarily conclusive as to either of them. Thus, contrary to Complainant's arguments, it is not the case that all changes in wages, hours and conditions of employment with respect to employees as to whom there is pending a question of representation necessarily will constitute a prohibited practice." 4/

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2/ Sec. 111.07(3), Wis. Stats.

3/ Menomonie Joint School District No. 1, Dec. No. 14811-C (McGilligan), aff'd 14811-D; City of Waukesha (Water Utility), Dec. No. 11486, (WERC, 12/72).

4/ City of Sparta, Dec. No. 12778-A (Gratz), 12/74 (aff'd 12778-B) (WERC, 1/75); Menomonie Joint School District No. 1, supra.

County Board Chairperson Mary Wirth testified that she had raised the question of the appropriateness of paying such expenses as early as May, 1982. Although references to meal allowances and payments in subsequent minutes of the Employee Relations Committee are sketchy, references to meal allowances do occur prior to January, 1983, and the record is devoid of evidence to rebut Wirth's contention. Wirth's testimony was supported by Employee Relations Committee Chairman Tom Waters, who also testified to the effect that the Committee could not be accused of unseemly haste in its deliberations. A reading of the minutes confirms Waters as to the latter testimony, showing that a number of items were discussed at length before being put down for a formal vote. Waters and Wirth both testified that sentiment in the Employee Relations Committee was early on in favor of cancelling the meal allowance and that action was held up solely because of the political nature of cancelling this benefit for County Supervisors. This is credible particularly in light of testimony by Union organizing committee member Jenean Krahn, a social worker who testified that in the fall of 1982 employees learned that the mileage allowance was being reduced from 25¢ to 22¢ per mile and that "there was going to be a probable pay freeze". 5/ Krahn testified that this economy drive in the Employee Relations Committee and the County Board generally was the particular event which spurred the Union's organizing campaign. But the fact that the economy drive was general supports the employer witnesses' testimony that the cancellation of the meal allowance was, along with other economy moves, under consideration before the Union organizing began. I find, therefore, that Complainants have not proved by a clear and satisfactory preponderance of the evidence that the cancellation of the meal allowance was not part and parcel of the economy drive which preceded the Union organizing. Even though a substantial time elapsed between the start of that series of discussions in the Employee Relations Committee and the actual decision to change the meal policy, therefore, it would be putting the cart before the horse to say that the meal policy change was a consequence of, or interfered with, the Union's organizing; for, on the contrary, the threat of that cut and the other economy moves the County was considering were themselves the genesis of the Union's ultimately-successful campaign.

I conclude that Complainant has not proved by a clear and satisfactory preponderance of the evidence that the cancellation of the in-County meal allowance was either unlawfully motivated or likely to have an unlawful impact on employee exercise of MERA rights.

#### State Bar Association Fees

Complainant contends that the County had a policy of paying for fees for the state bar association on behalf of assistant district attorneys, and that this policy was changed during and because of its organizing campaign. Assistant District Attorney Kevin Costello testified that a search of district attorney files revealed payments made in 1980 and 1982 on behalf of assistant district attorneys. (Costello himself was hired in September, 1983). County Clerk Dorothy Eck testified that the records found by Costello indicated that such payments had been made. But Eck also testified that she had told District Attorney Emil Everix more than once, in response to his prior requests to have these fees paid on behalf of assistant district attorneys, that County policy was not to pay such fees except on behalf of the district attorney himself. Eck testified that she had told Everix this first as long ago as 1979 or 1980.

The County introduced an invoice showing a date of November 23, 1982 opposite an entry showing that the Employment Relations Committee had refused to pay "district attorney dues" in the amount of \$28 on behalf of Assistant District Attorney Greg Richardson. Minutes of the Employee Relations Committee of November 21, 1982 show that a vote in that Committee on that date denied the payment of such dues. There is no evidence in the record that the Union organizing campaign, or even preliminary discussions by and among employees, began prior to December, 1982. Complainant argues that the "district attorney dues" referred to above must relate to some other organization than the state bar association, but the record does not reflect membership in any other organizations by any assistant district attorney. Furthermore, a consistent County policy in favor of paying for such dues would leave unexplained the absence of any record of

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5/ Transcript pg. 23.

bar association dues paid for 1981 for any assistant district attorney. But most significantly, the Union failed to call District Attorney Everix to rebut Eck's testimony that Everix had been told previously that such payments were not in accordance with County policy. This failure supports an inference that the district attorney put through vouchers, sometimes successfully, for assistant district attorneys, rather than that such payments were in fact a matter of official County policy. I conclude that Complainant has not demonstrated by a clear and satisfactory preponderance of the evidence that the County at any time had a policy of payment of bar association dues for assistant district attorneys.

For these reasons, I dismiss the complaint in its entirety.

Dated at Madison, Wisconsin this 20th day of August, 1984.

By   
Christopher Honeyman, Examiner